

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

LARRY G. PHILPOT,

Plaintiff,

v.

GRAY TELEVISION, INC.,

Defendant.

Case No. 3:15-cv-00145 JD-CAN

Judge Jon E. DeGuilio

**Magistrate Judge Christopher A.
Nuechterlein**

GRAY TELEVISION GROUP, INC.,

Third-Party Plaintiff,

v.

**MULTIMEDIA GRAPHIC NETWORK,
INC. d/b/a MGN Online,**

Third-Party Defendant.

NOTICE OF MOTION

TO: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that, on October 8, 2015, Gray Television Group, Inc. filed its Unopposed Motion to Extend Pre-Trial Deadlines, a copy of which is hereby served upon you. As set forth in Local Rule 7.1, any party in opposition to such motion has fourteen (14) days after service to file an objection.

GRAY TELEVISION GROUP, INC.

By: /s/ Robert J. Labate
One of Its Attorneys

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LARRY G. PHILPOT,)	
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Plaintiff,)	Case No. 3:15-cv-00145 JD-CAN
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v.)	
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GRAY TELEVISION, INC.,)	Judge Jon E. DeGuilio
)	Magistrate Judge Christopher A.
Defendant.)	Nuechterlein
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GRAY TELEVISION GROUP, INC.,)	
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Third-Party Plaintiff,)	
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v.)	
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MULTIMEDIA GRAPHIC NETWORK,)	
INC. d/b/a MGN Online,)	
)	
Third-Party Defendant.)	

UNOPPOSED MOTION TO EXTEND PRE-TRIAL DEADLINES

NOW COMES Defendant, Gray Television Group, Inc. (“**Defendant**”), and files this Motion to extended certain discovery and other pre-trial deadlines, and respectfully states:

1. On August 24, 2015 [Dkt. No. 46], this Court entered an Order setting November 5, 2015 as the deadline for all discovery to be conducted in this case pursuant to Federal Rules of Civil Procedure 26 through 37. The Scheduling Order also sets October 9, 2015 as the deadline for Defendant to file and serve its expert reports pursuant to Federal Rule of Civil Procedure 26(a)(2).

2. Defendant and Plaintiff are engaged in written discovery, however, the parties are hesitant to conduct depositions until this Court rules on Defendant’s motion seeking authority to

serve Multimedia Graphic Network, Inc. (“**MGN**”) with a third-party complaint [Dkt. No. 48] (the “**Third-Party Complaint**”).

3. The Third-Party Complaint alleges that MGN licensed the Nelson Photo to Defendant and that MGN is liable for any judgment against Defendant returned in favor of Plaintiff. Accordingly, the Third-Party Complaint is based on substantially similar facts and circumstances as those asserted in Plaintiff’s complaint against Defendant herein.

4. If MGN is joined as a party, it likely will want to conduct written discovery and to participate in depositions taken by Plaintiff and Defendant.

5. Additionally, in its Answer and Affirmative Defenses [Dkt No. 32], Defendant asserts that its use of the Nelson Photo is protected “fair use” pursuant to 17 U.S.C. § 107. Defendant’s “fair use” defense likely will include expert analysis of the effect on the market by Defendant’s use of the Nelson Photo. See *Kienitz v. Sconnie Nation LLC*, 766 F.3d 756 (7th Cir. 2014).

6. Plaintiff and Defendant anticipate submitting an Agreed Protective Order to protect from disclosure certain license and settlements that Plaintiff has entered into with regard to the Nelson Photo and any information produced by Defendant that is deemed confidential. Until entry of such Protective Order and receipt of Plaintiff’s licenses and settlements, Defendant will not be able to determine whether retention of an expert is required, and such expert will not have sufficient time to submit such report, if any, to Plaintiff.

7. Accordingly, Defendant request extension of the discovery deadline in this case and extension of the deadline for Gray to submit its expert reports.

8. The undersigned has discussed this matter with counsel for Plaintiff, who has no objection to the relief requested by this Motion.

WHEREFORE, Defendant Gray Television Group, Inc. respectfully requests that this Court enter an Order (a) extending the discovery deadline for Gray and Philpot until December 31, 2015; (b) extending the deadline for Gray to file and serve its experts' reports until November 30, 2015; and (c) for any other relief that this Court deems just and proper.

DATE: October 8, 2015

Respectfully submitted,

GRAY TELEVISION GROUP, INC.

By: /s/ Robert J. Labate
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, an attorney, certify under penalty of perjury that on October 8, 2015 a copy of the foregoing Gray Television Group, Inc.'s Motion to Extend Discovery Deadlines was served upon all counsel of record consenting to service through this Courts CM/ECF system:

Jacob R Cox
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/s/ Richard A. Bixter, Jr.